



STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS

FILED

Mar 08, 2024, 11:40 am

OFFICE OF FAIR HEARINGS

AHCA Case No.: 23-FH3188

[REDACTED]

PETITIONER,

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a hearing officer convened a telephonic Fair Hearing on the instant case on February 9, 2024, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Lee Ann Williams
Medical Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for eighteen (18) hours per day, seven (7) days per week (or 3,150 units) of personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and parent, appeared at the Fair Hearing on behalf of Petitioner. [REDACTED] (“[REDACTED]”), Nurse Practitioner, appeared at the Fair Hearing as a witness for Petitioner.

Lee Ann Williams, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared at the Fair Hearing as the representative for Respondent. Dr. Chris Kunis (“Dr. Kunis”), Medical Director with eQHealth Solutions of Florida and Kepro, Inc. (“eQHealth”), attended as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a seven (7)-page evidence packet, a sixteen (16)-page evidence packet, and a fourteen (14)-page evidence packet. The seven (7)-page packet appears in the Office of Fair Hearings’ Case Management system as the files titled “23-FH3188 Evidence.pdf” and “23-FH3188 Evidence (CONT).pdf.” The sixteen (16)-page packet appears in the Office of Fair Hearings’ Case Management system as the file titled “23-FH3188 Additional Evidence.pdf.” The fourteen (14)-page packet appears in the Office of Fair Hearings’ Case Management system as the file titled “23-FH3188 Resent Evidence.pdf.” Absent an objection from Respondent, the undersigned admitted the seven (7)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”), the sixteen (16)-page packet into evidence as Petitioner’s Composite Exhibit 2 (“PCE 2”), and the fourteen (14)-page packet into evidence as Petitioner’s Composite Exhibit 3 (“PCE 3”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and fourteen (114)-page evidence packet and an eighty (80)-page evidence packet. The one hundred and fourteen (114)-page packet appears in the Office of Fair Hearings’ document management system as files titled “[REDACTED] FH 02.09.2024 1-83.pdf” and “[REDACTED] FH

02.09.2024 84-114.pdf.” The eighty (80)-page packet appears in the Office of Fair Hearings’ document management system as the file titled “23-FH3188 AHCA Evidence PCS Svcs 80 Pages.pdf.” Without objection, the undersigned admitted the one hundred and fourteen (114)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the eighty (80)-page evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. See RCE 1 at page 16. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the agency to review prior authorization requests for services. See RCE 2 at page 2.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. See RCE 1 at 16. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED] *Id.* at 16, 64, and 84.

3. Petitioner provided a letter from [REDACTED], MD, of [REDACTED], which states in pertinent part:

I am writing on behalf of [Petitioner] to document medical necessity of PCS services with CDC+ program through EQ Health and request that these services be approved for coverage for 18 hours a day until otherwise specified.

Patient History and Diagnosis

[Petitioner] is a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

In light of this clinical information, and this patient’s condition, PCS services are *medically necessary* and warrant coverage. . . .

RCE 1 at 86.

4. A FL Home Health Assessment Tool assessment was completed for Petitioner, dated December 12, 2023. *Id.* at 44 – 51. According to the assessment, Petitioner had [REDACTED]

[REDACTED]. *Id.* at 45. Petitioner is likely to remain in fragile health and have ongoing high risk of serious complication. *Id.* at 45. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at

47. [REDACTED]

[REDACTED] *Id.* at 48 – 49.

5. On or about December 11, 2023, Petitioner requested eighteen (18) hours per day, seven (7) days per week of personal care services. *Id.* at 21. In the Notice of Outcome (“NOO”), dated December 14, 2023, Respondent denied Petitioner’s request. *Id.* at 21 – 24. The NOO explained the basis of the decision as follows:

The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administration Code, Specifically the requested services are not medically necessary under the following standard(s):

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.

The rational for our decision is as follows:

PR Principal Reason – Denial

Submitted information does not support the medical necessity for requested services.

Request is for PCS services for this [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Deny this request.

Id. at 21 – 22.

6. Petitioner requested a plan appeal and Respondent issued a Reconsideration Determination, dated December 21, 2023, upholding the denial of personal care services. *Id.* at 30 – 33. The NAPR states, in pertinent part:

...

The patient is a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Id. at 31.

7. On December 21, 2023, Petitioner requested a Fair Hearing to challenge the denial of personal care services. On January 25, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 9, 2024, at 1:00 p.m. EST.

8. [REDACTED] testified to the following:

- a. [REDACTED] is requesting personal care services to be completed by [REDACTED]
[REDACTED], through the Consumer-Directed Care Plus Program (“CDC+”).

- b. [REDACTED] has tried to find steady nursing services for Petitioner but it has not worked out in Petitioner's best interest.
 - c. [REDACTED] has been heavily trained in taking care of Petitioner.
 - d. Petitioner is homeschooled.
 - e. [REDACTED] will not allow Petitioner to attend prescribed pediatric extended care ("PPEC") because of Petitioner becoming sick at PPEC in the past and because [REDACTED] is not comfortable with it.
 - f. Petitioner uses a [REDACTED].
 - g. Neither [REDACTED] nor [REDACTED] work outside of the home.
 - h. Petitioner does not have any deficits in regards to [REDACTED] activities of daily living ("ADLs").
 - i. Petitioner needs more than one person to take care of [REDACTED].
 - j. Petitioner is [REDACTED] between 7:00 p.m. and 7:00 a.m.
 - k. Petitioner is prescribed medication to be taken daily, some of which uses [REDACTED]
[REDACTED]
9. [REDACTED] testified to the following:
- a. Petitioner has complicated medical diagnoses.
 - b. Petitioner [REDACTED].
 - c. [REDACTED] would prefer to have a registered nurse take care of Petitioner.
10. Dr. Kunis testified to the following:
- a. Petitioner has [REDACTED]
[REDACTED]. These

levels of care require a skilled nurse. Personal care services cannot be approved because of the level of care that is required.

- b. Petitioner was in PPEC, which is constant skilled nursing and appropriate for Petitioner. Personal care services mean a home health aide would go to the home.
- c. Personal care services are a level of care provided by a non-skilled health professional. These types of services include bathing and assistance with feeding. It does not mean tube feedings. Petitioner's level of care needs are beyond personal care services. A personal care aide cannot assist with g-tube feeding and medication administration.
- d. The CDC+ program pays a parent for the care of their child, usually in the home. A skilled registered nurse would provide a higher level of care.
- e. A nurse at first level review was unable to approve the requested personal care services for Petitioner because of the complexity of care needed.
- f. ADLs that would be covered by a personal care attendant would include [REDACTED]
[REDACTED]
[REDACTED]
- g. The Agency determined that PPEC services or Private Duty Nursing ("PDN") services would be more appropriate for Petitioner. Personal care services are not the level of care that Petitioner needs at this point. PPEC services and PDN services are rendered by a nurse (such as a licensed practical nurse ("LPN") or a registered nurse ("RN")), as opposed to a personal care aide.
- h. When parents are the caregivers, they must provide as much care as they can.

- i. Dr. Kunis agrees that the personal care services denial should be upheld.
- j. Requests for PDN would be approved.

11. The Agency's Outpatient Review History states the following, in pertinent part:

CLINICAL RATIONALE FOR DECISION: Request is for PCS services for this [REDACTED]. These require care by PDN [and] not by PCS. Also the PCS care would be provided by the parents. These clinicals do not justify the medical necessity of requested PCS services. Deny this request.

PR RECON DETERMINATION: The patient is a [REDACTED].

RCE 1 at 17.

CONCLUSIONS OF LAW

12. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

13. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b).

14. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b).

15. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the

burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

16. Because Petitioner requested a new service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

17. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

RCE 2 at 4 – 5.

18. Petitioner is under age 21, and therefore eligible for EPSDT services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

...

RCE at 13.

19. The Personal Care Services Coverage Policy (“PCS Policy”), which is incorporated by reference in Rule 59G-4.215, F.A.C., states as follows:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

1.3 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

1.3.1 Activities of Daily Living (ADL)

As defined in Rule 59G-1.010, F. A. C.

...

1.3.9 Instrumental Activities of Daily Living (IADL)

As defined in Rule 59G-1.010, F. A. C.

1.3.10 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F. A. C.

...

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

4.2.1 Parental Responsibility

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care

they can safely render without jeopardizing the health or safety of the recipient when needed.

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient's place of residence
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

7.0 Authorization

7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid’s General Policies on authorization requirements.

...

Personal Care Task	General Time Allowances
Bathing	
Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
Dressing	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
Grooming and Skin Care	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
Positioning	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
Transfers	

Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
Toileting and Maintaining Continence	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy at 1, 3 – 5.

20. The Consumer-Directed Care Plus Program Coverage, Limitations, and Reimbursement handbook (October 2015) (“CDC+ Handbook”), incorporated by reference in Fla. Admin. Code R. 59G-13.088, describes the CDC+ program as “a Florida Medicaid program that permits certain Consumers to self-direct their own Personal Assistance Services.” See RCE 2 at 54 – 80. The CDC+ Handbook states the following:

Medical necessity

Medicaid reimburses services that are determined medically necessary and do not duplicate another provider’s service.

Rule 59G-1.010, Florida Administrative Code (F.A.C.) defines “medically necessary” or “medical necessity” as follows:

“[T]he medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program and not be experimental or investigational;
4. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.”

“(c) The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.”

...

Personal Care Assistance

Description

Assistance with eating, meal preparation, bathing, dressing, personal hygiene, and activities of daily living. Also includes light housekeeping when these activities are essential to the health, safety, and welfare of the Consumer and when no one else is available to perform them. Personal Care Assistance may not be used solely for supervision.

...

RCE 2 at 71, 80.

21. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated

by reference in Fla. Admin. Code R. 59G-1.010, defines the commonly used terms as follows:

2.2 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting

- Transferring

2.64 Instrumental Activities of Daily Living (IADLs)

IADLs include:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Medication management
- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

2.83 Medically Necessary or Medical Necessity

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

...

RCE 2 at 17, 22 – 23.

22. The Prescribed Pediatric Extended Care Services Coverage Policy (February 2018) (“PPEC Policy”) establishes the provision and coverage of PPEC services under Florida Medicaid. See RCE 2 at 38 – 43. The PPEC Policy states as follows:

1.1 Description

Florida Medicaid prescribed pediatric extended care (PPEC) services provide skilled nursing supervision and therapeutic interventions in a non-residential setting to medically dependent or technologically dependent recipients.

...

2.2 Who Can Receive

Florida Medicaid recipients under the age of 21 years requiring medically necessary PPEC services and who:

- Require continuous therapeutic interventions or skilled nursing supervision, as described in section 400.902, F.S., and in Rule 59A-13.007, F.A.C.
- Are determined stable by a physician and who are not a threat to self or others

...

1.3 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

...

1.3.7 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

5.0 Exclusion

5.1 General Non-Covered Criteria

Services related to this policy are not covered when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0
- The recipient does not meet the eligibility requirements listed in section 2.0
- The service unnecessarily duplicates another provider’s service

RCE 2 at 40 – 42.

23. Fla. Admin. Code Rule 59A-13.007(4)(a) states the following:

(4) Each child admitted for service to a PPEC center must meet at least the following criteria:

(a) Infants and children considered for admission to the PPEC center will be those who are medically or technologically dependent. . . .

...

Further, section 400.902, Florida Statutes, describes “medically dependent or technologically dependent child” as follows:

[A] child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse.

RCE 2 at 46.

24. Fla. Admin. Code R. 59G-4.290 defines skilled nursing as follows:

(3) Skilled Services Criteria.

- a) To be classified as requiring skilled nursing or skilled rehabilitative services in the community or in a nursing facility, the recipient must require the type of medical, nursing or rehabilitative services specified in this subsection.
- b) Skilled Nursing. To be classified as skilled nursing service, the service must meet all of the following conditions:
 - 1. Ordered by and remain under the supervision of a physician;
 - 2. Sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse.
 - 3. Required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effect performance;
 - 4. Required on a daily basis;
 - 5. Reasonable and necessary to the treatment of a specified documented illness or injury; and,
 - 6. Consistent with the nature and severity of the individual’s condition or the disease state or stage.
- c) Examples of services that qualify as skilled nursing services:
 - 1. Intravenous medication or fluids.
 - 2. Intramuscular or subcutaneous injection and hypodermoclysis when:

- a. Administered by licensed nursing personnel at least 5 times weekly, excluding daily insulin administration; and,
 - b. Observation is necessary to assess the recipient's response to treatment or to identify adverse reactions.
- 3. Management and monitoring medication regime on a daily basis:
 - a. For drugs whose dosage requirements may rapidly change;
 - b. For drugs prone to cause adverse reactions, severe side effects or unfavorable reactions; and,
 - c. For residents with unstable reactions.
- 4. Levin tube and gastrostomy feedings; excluding feedings performed by residents, family members, or friends.
- 5. Administration of medical gases, aerosolized medication or oxygen which is started, monitored and regulated by professional staff.
- 6. Naso-pharyngeal and tracheotomy aspiration, excluding tracheotomy care in self-care residents.
- 7. Insertion, replacement, and sterile irrigation of catheters when:
 - a. Medically necessary or required for reasons other than to maintain satisfactory catheter functioning and dryness;
 - b. The medical need is documented by the physician;
 - c. Continuous irrigation, frequent insertion, special care or observation is required because of bleeding, infection, obstruction, or heavy sediment formations; and,
 - d. Care of a recently inserted supra-pubic catheter, inserted within 2-4 weeks, is required.
- 8. Colostomy and ileostomy care:
 - a. When medically necessary and required during early postoperative period;
 - b. During the period of initial self-care training, or
 - c. when complications are present and documented in the medical record.
- 9. Treatment of decubitus ulcers when:
 - a. Deep or wide without necrotic center;
 - b. Deep or wide with layers of necrotic tissue, or
 - c. Infected and draining.
- 10. Treatment of widespread infected or draining skin disorders.
- 11. Application of dressings involving prescription medication and aseptic techniques when documented as required on a daily basis. Excludes simple dressings involving non-infected cases, simple skin breaks, and healed postoperative incisions.
- 12. Heat treatments prescribed by a physician as daily treatment for a specific condition.

13. Rehabilitation nursing procedures required on a daily basis as necessary to restore functioning, including teaching and adaptive aspects of nursing.

25. Petitioner requested eighteen (18) hours per day, seven (7) days per week as and for personal care services. *See supra* ¶5. In the NOO, dated December 14, 2023, Respondent denied Petitioner’s request and explained that the request was not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment”. *See supra* ¶ 5. Respondent further explained that the “[s]ubmitted information does not support the medical necessity for requested services” and that the “clinical do not justify the medical necessity of requested PCS services.” *See* ¶ 5. Respondent relied upon Petitioner’s submitted information in making their medical necessity determination. *See* ¶ 5 – 6, 11.

26. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. *See* ¶ 18. As provided in section 2.83 of the Definitions Policy, a component of medical necessity is that services must be “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.” *See* ¶ 21. This criterion was identified as not being met in the NOO. *See* ¶ 5. Section 5.1 of the PCS Policy provides that services related to this policy are not reimbursed when: the service does not meet the medical necessity criteria listed in section 1.0; the recipient does not meet eligibility requirements listed in section 2.0; or the service unnecessarily duplicates another provider’s service. *See* ¶ 19.

27. Personal care services provide “medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age-appropriate instrumental activities of daily living (IADL) to enable the recipient to accomplish tasks that they would normally be able

to do for themselves if they did not have a medical condition or disability.” See ¶ 19. These services are authorized when the parent is not able to provide ADL or IADL care. See ¶ 19. The Florida Medicaid program mandates that the recipient’s parent must participate in providing care to the fullest extent possible. See ¶ 19. The Personal Care services must also be medically necessary. See ¶ 19. Under the PC Policy and the CDC+ Handbook, personal care services must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. See ¶ 19 – 20. To be medically necessary, the requested personal care services must meet the five (5) criteria set forth in section 2.83 of the Definitions Policy. See ¶ 19 – 21. Based on the documentation and testimony elicited at the Fair Hearing, Respondent denied Petitioner’s request for eighteen (18) hours per day, seven (7) days per week of personal care services because the following medical necessity criteria was not met: services must be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs. See ¶ 5, 10.

28. The record indicates that eighteen (18) hours per day, seven (7) days per week of personal care services is in excess of Petitioner’s personal care needs. Both parties agree that Petitioner requires a significant amount of assistance with ADLs and IADLs. See ¶ 5 – 6, 8 – 10. However, [REDACTED] failed to present evidence as to how much time Petitioner requires to complete *each* individual ADL or IADL, which ADLs would not be completed if the requested services are not authorized, and how frequently Petitioner requires assistance with each ADL or IADL daily. In addition, the record reflects that some of the requested personal care services would be used for skilled nursing tasks that a personal care aide is prohibited from performing, such as g-tube feeding and medication administration. See ¶ 10. [REDACTED] acknowledged that [REDACTED] would

continue to perform these skilled nursing tasks for Petitioner and that [REDACTED] would like to perform these tasks as Petitioner's personal care service aide. See ¶ 8. Lastly, Respondent asserted that the eighteen (18) hours per day, seven (7) days per week of personal care services were in excess of Petitioner's needs when parental responsibility is taken into account. See ¶ 10. Dr. Kunis asserted that when parents are the caregivers, they must provide as much care as they can. See ¶ 10. [REDACTED] testified that [REDACTED] and [REDACTED] no longer work outside of the home in order to care for Petitioner. See ¶ 8. [REDACTED] did not address how section 4.2.1 of the PC Policy regarding Parental Responsibility does or does not apply to Petitioner's case. [REDACTED] did not present any barriers or other time obligations that would prevent [REDACTED] or [REDACTED] from rendering care to Petitioner as the parents. Petitioner submitted a letter from Petitioner's doctor recommending the requested services. See ¶ 3. The undersigned considered the provider recommendation. However, the fact that a provider has recommended services does not, in itself, make such services medically necessary. See ¶ 20 – 21.

29. Based on the documentation admitted into the record and the testimony elicited at the Fair Hearing, the undersigned finds that Petitioner requires assistance with ADLs and IADLs and requires some amount of personal care services. However, Petitioner bears the burden of proving that the entire amount of requested personal care services is medically necessary. In this case, Petitioner's parents are available to provide care to Petitioner. Petitioner failed to establish that Petitioner requires eighteen (18) hours per day, seven (7) days per week of assistance with ADLs and IADLs. Thus, Petitioner has not established that the eighteen (18) hours per day, seven (7) days per week of personal care services at issue are individualized, specific,

and consistent with symptoms or confirmed diagnosis of the illness under treatment, and are not in excess of Petitioner's needs.

30. Dr. Kunis presented credible testimony that Petitioner requires a significant amount of skilled nursing services, which are a higher level of care than personal care services. See ¶ 10. So much so, that Dr. Kunis argued that Petitioner should receive PPEC services and confirmed that PDN services would be approved for Petitioner. See ¶ 10. [REDACTED] did not dispute that Petitioner requires the care Dr. Kunis recommended, but [REDACTED] argued that [REDACTED] and [REDACTED] can provide for Petitioner's needs and seeks compensation for such care. See ¶ 8. [REDACTED] did not present any evidence of education or experience as an LN or RN. Also, [REDACTED], a nurse practitioner in [REDACTED] own right, testified that [REDACTED] would prefer to have a registered nurse take care of Petitioner. See ¶ 9. However, [REDACTED] testified that [REDACTED] does not want Petitioner to attend a PPEC facility. See ¶ 8. The undersigned did not find [REDACTED]'s argument as to why Petitioner should not receive skilled nursing skills to be credible in light of Petitioner's skilled nursing needs. The undersigned finds that the requested personal care services are not individualized, specific, and consistent with Petitioner's confirmed diagnosis. Therefore, the requested personal care services are not medically necessary.

31. Upon consideration of the testimony provided, Petitioner's Composite Exhibit 1, Petitioner's Composite Exhibit 2, Petitioner's Composite Exhibit 3, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable polices and laws, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested personal care services were medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that personal care

services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner failed to prove that Respondent's denial of eighteen (18) hours per day, seven (7) days per week of personal care services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of Petitioner's request for personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of Petitioner's request for personal care services is **DENIED**.

DONE and ORDERED this 8th day of March, 2024, in Tallahassee, Leon County, Florida.



Kameisha Presley

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KAMEISHA PRESLEY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:

[REDACTED]

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